

The Uninsured Employers' Fund (UEF) asks the Utah Labor Commission to review Administrative Law Judge Eblen's denial of UEF's motion to join Sunrise Building Construction, Inc. in the matter of G. M. E.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

BACKGROUND AND ISSUES PRESENTED

Mr. E. alleges that he suffered injuries from an accident on August 11, 2003, while working on a construction project for Platinum Builders. Because Platinum did not have workers' compensation insurance coverage at the time of the accident, Platinum and UEF were both named as defendants to Mr. E.'s claim. UEF then moved to join Sunrise Building Construction and its insurance carrier, Workers Compensation Fund, as additional defendants on the theory that Sunrise was the general contractor on the construction project in question and, as such, shares liability for Mr. E.'s workers' compensation benefits as a "statutory employer" under § 34A-2-103 of the Act.

Judge Eblen denied UEF's motion to join Sunrise and WCF on the grounds "there is insufficient evidence in the record to support the Motion for Joinder." Judge Eblen also observed that "as a general rule, the commission does not join additional respondents by motion of other respondents."

UEF now seeks Commission review of Judge Eblen's decision. Specifically, UEF contends that Sunrise subcontracted with Platinum and thereby became the statutory employer of Platinum's employees.

FINDINGS OF FACT

In considering whether to rule on UEF's motion for interlocutory review of Judge Eblen's refusal to join Sunrise and WCF, the Commission notes that such interlocutory reviews can diminish the ALJ's ability to organize and manage evidentiary hearings, disrupt the adjudicatory process, and delay the resolution of claims. Consequently, the Commission will entertain interlocutory motions for review only if the potential advantage from deciding the issues presented will clearly outweigh "the interruption of the hearing process and the other costs of piecemeal review."¹

In this case, the proper determination of the parties who are liable for Mr. E.'s claim is critical to the full and efficient adjudication of that claim.² The Commission therefore concludes that the advantages of resolving UEF's interlocutory appeal outweigh the disadvantages. The Commission will therefore consider the merits of UEF's motion for joinder.

Judge Eblen denied UEF's request to join Sunrise and WCF because there was insufficient evidence that Platinum was a subcontractor to Sunrise. The Commission has reviewed the entire file in this matter and agrees with Judge Eblen's assessment. The Commission can find no evidence that

links Sunrise and Platinum in a contractor/subcontractor relationship. Without such evidence, there is no basis to join Sunrise and WCF as defendants on a statutory employer theory. The Commission therefore affirms Judge Eblen's determination.³

ORDER

The Commission denies UEF's motion for review and remands this matter to Judge Eblen to complete the adjudication of Mr. E.'s claim. It is so ordered .

Dated this 25th day of May, 2004.

R. Lee Ellertson
Commissioner

1. Charles H. Koch, Jr., Administrative Law and Practice (1985), '6.75.
2. The Commission notes that in analogous circumstances, Utah's appellate courts have accepted interlocutory appeals. See Werner-Jacobsen v. Bednarik, 946 P.2d 744 (Utah App. 1997).
3. The Commission does not subscribe to Judge Eblen's comment that respondents are not generally allowed to move for joinder of other respondents. However, since this was not the basis for Judge Eblen's ruling, the Commission does not address it further.